

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1013 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SUTHAR ILABEN NATUBHAI

Versus

REGISTRAR

Appearance:

1. Special Civil Application No. 1013 of 1994
MR PRADYUMAN B BHATT for Petitioner

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 04/03/97

ORAL JUDGEMENT

1. Mr. Pradyuman Bhatt appears for the petitioner.
None present for the respondents in spite of service.

2. Heard learned counsel for the petitioner. The petitioner is a student of Three year nursing course which is conducted by the Gujarat Nursing Council. While the petitioner was promoted to the third and final year of the nursing course, at the annual examinations, she cleared Paper I and Paper II which are theory papers. However she failed in the practicals at the annual

examination. As per the scheme she appeared at two successive supplementary examinations of practicals with the benefit of exemption from appearing at the theory papers which she has passed. However, she failed in the successive attempts also. Last of the marksheet dated 25.7.1993 has been filed along with the petition. The prayer of the petitioner is to quash or set aside the rules which lay down that if a student fails in the last year of the Nursing Examination has to reappear from study ab-initio; as such rules are arbitrary, capricious, violative of provisions of Article 14 of the Constitution of India, violative of principles of natural justice, null, void, non-est etc. and has sought mandamus against the respondents to allow the petitioner in the Third Year Examination of General Nursing and Midwifery once again.

3. Having carefully considered the contention raised by learned counsel and perused the rules governing the examinations, I am of the opinion that the petition must fail. The scheme of the examination disclosed in clause (2) and (3) of the eligibility for admission to examination as under:

"2. Supplementary Examinations:

Council/Board may hold supplementary examination after six months of the annual examination:

- (a) If a student fails in one theory paper,
she/he may be promoted to next year of study. She/he will sit for a supplementary examination held subsequently in the failed subjects.
- (b) After a second failure in the same paper(s) the students may continue in the School at the discretion of the school authorities and she/he may appear for the next examination subsequently.
- (c) If a student fails in two or more papers
she/he shall repeat the whole year.
- (d) Passing in practical examination is compulsory for promotion to the next year, and two supplementary examinations each year.

3. Student will be allowed to sit for one annual examination and two supplementary examinations each year."

4. From the aforesaid it is fairly clear that in

each year of the course in the first instance the student has to appear at annual examination related to that year of studies. If he fails in one theory paper but passes in other papers he is allowed to keep terms with the next higher class but he has to take examination in the subject in which he has failed at the ensuing Supplementary Examinations to that year. If a student fails in more than one, he has to repeat the entire course of that year, that is, he is not allowed to keep terms in the next higher class. In no case a student is allowed to keep terms in the next higher class if he fails in practicals notwithstanding that he might have cleared all the theory papers. The scheme of the examination is that for each year of the said course one annual examination is held and two supplementary examinations are held. Obviously, supplementary examinations are held for the purposes of clearing the papers in which a student has failed in the annual examination. The supplementary examinations are necessarily attached to the annual examinations with reference to the subject in which a student has failed. The student is not at all required to undertake supplementary examinations if he has passed in all the papers. If he is allowed to keep term in accordance with the rules, then too the supplementary examination which he can take is in respect of the subject in which he has failed at the lower examination along with taking annual examinations of the higher class. It is further clear that after a second failure in the same paper the student may lose the benefit of continuing in the school. His continuance in the school is within the discretion of the school authorities. Secondly in the case of ATKT while the candidate is allowed to take the examinations of the higher standards as and when they are due his result of the next higher class cannot be declared until he has passed in the subjects in which he has failed in the lower examinations. The circular in simple terms state that if a student fails in one theory paper, he will be permitted to next year of study on ATKT basis, he will sit for a supplementary examination held for in the failed subject. Even if a student with ATKT fails in the first examination (second trial) he will be allowed to appear for next year examination but the result will be withheld till he clears or passes the paper in which a candidate has failed. It is further envisaged that each student will be allowed to appear for one or two supplementary examinations each year as per clause (3) referred to above. The scheme read in totality leaves no doubt that for passing a subject whether along with other subjects, or singly, a candidate has maximum of three trials. The first of the trial being at the annual

examination. Having failed therein one can have two successive trials in two supplementary examinations held for the purposes of clearing the subject in which a candidate has failed. It is only after the student clears the subjects in which he has failed, his result of the next higher class can be declared, in case he has been allowed the benefit of keeping term on being promoted to the next higher class. If in the course of allotted trials a student fails to clear the subject he can neither be relegated to the position of starting in the year to which failure relates nor he can be given advantage of keeping promotion, that is to say successive failure in subjects in three attempts results in end of the road for pursuing nursing course further.

5. Therefore on plain interpretation of the rules there is no room to interfere with the result of the petitioner about non availability of any further trials of passing examinations whether in the practicals alone or in all the subjects simultaneously once again in the third year of nursing course.

6. However, the petitioner has made a prayer for quashing the rule itself. No such ground has been made either in the petition or in the course of argument on the basis of which the scheme of permitting maximum three chances to appear and pass at any of the subjects and thereafter no more attempts be permitted can be held to be irrational or unreasonable. It is a matter of policy to be laid down by the authority conducting examinations as to the scheme of examinations which would result in a trained qualified nurse. The mere fact that it only permits a limited number of trials within which a candidate has to pass in a particular subject cannot render the rule as arbitrary, unjust or contrary to any constitutional provision.

7. Accordingly, I find no force in this petition and dismiss the same. Rule is discharged. No order as to costs.
